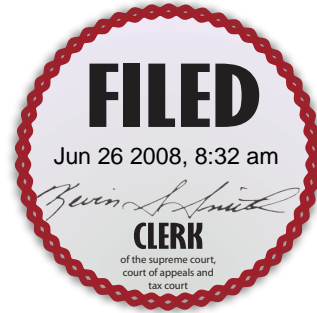


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

**JASON CHILDERS**

Hulse Lacey Hardacre Austin & Shine, P.C.  
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

**DAVID W. STONE IV**

Stone Office & Legal Research  
Anderson, Indiana

**BLANCHARD H. SHEARER**

Anderson, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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SCOTTY A. GODBEY,

Appellant-Respondent,

vs.

ANDREA D. GODBEY,

Appellee-Petitioner.

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No. 48A02-0709-CV-795

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APPEAL FROM THE MADISON SUPERIOR COURT, Division III  
The Honorable Thomas Newman, Jr.  
Cause No. 48D03-0605-DR-516

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**June 26, 2008**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

Scotty Godbey (“Husband”) appeals the order of the Madison Superior Court regarding distribution of marital assets and liabilities. Husband raises the following issues:

- I. Whether the trial court’s order on his motion to correct error that reallocated all of Andrea Godbey’s (“Wife”) retirement account to her is clearly erroneous.
- II. Whether the trial court erred in not adding \$540 to the amount Wife owed Husband for purposes of equalizing the distribution of the marital estate.
- III. Whether the trial court’s order requiring Husband to pay for one-half of his stepdaughter’s automobile is clearly erroneous.

Wife cross-appeals and raises one issue:

- I. Whether the trial court made a mathematical error in determining the compensating payment by wife to husband to make an equal division of assets.

We remand with instructions.

### **Facts and Procedural History**

Husband and Wife were married on August 12, 1995, and one child was born during the marriage. Wife has two children from a prior marriage.

On May 24, 2006, Wife filed her petition for dissolution of marriage. On July 10, 2006, the trial court issued a provisional order. The final hearing was held on November 21, 2006. The trial court ordered the parties to submit their proposed findings and conclusions. On April 8, 2007, the trial court issued its findings of fact and conclusions of law and found in relevant part:

### **Findings of Fact**

\* \* \*

8. The Court finds that the petition for dissolution was filed on May 24, 2006 and that the provisional order hearing was continued on the

motion of the respondent until June 19, 2006. The respondent did not pay support from separation until June 19, 2006. The Court finds that respondent should pay support retroactive to the date of filing in an amount as established by the provisional order. (\$135 x 4 weeks = \$540.00) dollars.

12. The Court attaches hereto and marked Attachment II the Court's proposed division of the real, personal property, and debt allocation.

\* \* \*

16. The Court finds that the parties jointly purchased a Chevrolet Cavalier automobile as a high school graduation gift for the petitioner's daughter. This loan is in both parties name. The automobile is valued at \$5,500.00 dollars and has a loan balance of \$6,548.89 dollars for a negative balance of \$1,048.89. The parties should continue to pay the obligation of this gift and each is responsible for (1/2) one-half of the loan balance.

\* \* \*

23. The Court finds that the respondent should be obligated to pay the Visa debt obligation since the majority of the charges dealt with his snow plowing business. The respondent indicated that some of the visa debt was also incurred to remodel the residence and items for the boat. The Court finds that the respondent will be given credit for the equity in the real estate. The Court finds that any improvement in the value of the real estate would also improve respondent's equity position. Since the petitioner will be awarded the real estate subject to (2) mortgages, it is only fair that respondent be liable for the entire Visa debt as he also retained his boat and snow plowing equipment.

\* \* \*

### **Conclusions of Law**

The Court follows the presumption created by law that there shall be a 50/50 division of marital property. The Court concludes that no evidence was submitted that changes this presumption.

5. The Court orders the provisional support to be retroactive to the date of filing and paid until these findings of fact and conclusions of law are issued by the Court. [. . .]

\* \* \*

8. The parties are to execute a qualified domestic relations order and divide the defined benefit plan and 403(b) plan[.]
9. The parties shall continue to each pay one-half (1/2) of the debt for the Cavalier automobile given to the petitioner's daughter as a high school graduation gift.

\* \* \*

16. The Visa debt of the parties shall be the responsibility of the respondent and he shall hold the petitioner harmless on this debt.

\* \* \*

19. The petitioner shall owe the respondent the sum of (\$22,315.50) dollars, which represents the equalizing amount of a 50/50 property division. [. . .]

\* \* \*

21. Petitioner is to be awarded the parties riding lawnmower previously owned by respondent's brother and given to parties herein and used at the marital residence.

Appellant's App. pp. 14-21.

## ATTACHMENT II ASSETS

\* \* \*

|                                       | Petitioner (Wife) | Respondent<br>(Husband) |
|---------------------------------------|-------------------|-------------------------|
| Real Estate Equity                    | \$ 37,352.03      |                         |
| Ski Boat                              |                   | \$ 1,726.10             |
| Jewelry                               | \$ 1,950.00       |                         |
| Personal Property/ Household<br>Goods | \$ 6,988.75       | \$ 16,323.00            |
| Retirement Account                    | \$ 8,899.00       | \$ 8,899.00             |
| Savings Account                       | \$ 4,244.10       | \$ 4,244.10             |
|                                       | <hr/>             | <hr/>                   |
|                                       | \$ 55,189.78      | \$ 31,244.10            |

## Recapitulation

|            |                            |
|------------|----------------------------|
| Petitioner | \$ 55,189.78               |
| Respondent | <u>\$ 31,244.10</u>        |
|            | \$ 23,945.68               |
|            | <u>\$ (1,090.18)</u>       |
|            | \$ 22,855.50               |
|            | \$ (540.00)                |
|            | <u><u>\$ 22,315.50</u></u> |

Appellant's App. at 24.

On April 12, 2007, Husband filed his motion to correct error. He alleged in relevant part:

3. The Court erred in retroactively ordering [Husband] to pay support provisionally.
7. It was error for the Court not to allow [Husband] to have items #29, 31, 66 & 81 of personal property [appraised by] Mark Volk.
8. It was error for the Court to order [Husband] to pay the entire Visa balance.
9. It was error for the Court to determine that [Wife] only owes [Husband] the sum of twenty two thousand three hundred fifteen dollars and fifty cents (\$22,315.50)[.]
11. It was error not to allow [Husband]'s brother to have his riding lawn mower.

Appellant's App. at 42-3.

On August 8, 2007, the trial court issued its order on Husband's motion to correct error and found in relevant part:

3. Regarding paragraph three, the Court grants the alleged error and shall not order [Husband] to pay support retroactively.
7. The alleged error in paragraph seven is granted and [Husband] shall have items 29, 31, 66 and 81 of the personal property appraised by Mark Volk.
8. The error alleged in paragraph eight is granted and each party shall pay one half of the Madison County Credit Union Visa account. The Court further finds that the [Wife] shall have all of her retirement account.
9. The Court denies the claimed error in paragraph number nine regarding the amount the [Wife] shall pay to the [Husband] to equalize the distribution of the marital estate. [. . .]
11. The Court grants the error claimed in paragraph eleven.

Appellant's App. at 8.

Husband appeals and Wife cross-appeals.

### **Standard of Review**

We begin by noting that the trial court, sua sponte, entered special findings of fact and conclusions of law. When a court has made special findings, we employ a two-step standard of review. Missi v. CCC Custom Kitchens, Inc., 731 N.E.2d 1037, 1039 (Ind.Ct.App.2000). We first determine whether the evidence supports the findings and then whether the findings support the judgment. Smith v. Brown, 778 N.E.2d 490, 494 (Ind.Ct.App.2002). We consider only the evidence most favorable to the judgment and all reasonable inferences to be drawn therefrom. Id. We do not reweigh the evidence or assess the credibility of the witnesses. Id. When the trial court enters findings sua sponte,

the specific findings control only as to the issues they cover. Id. at 495. A general judgment standard applies to any issue upon which the trial court has not made a finding. Id. A general judgment may be affirmed upon any legal theory supported by the evidence. Id.

### **Discussion and Decision**

Husband contends that the trial court committed reversible error when it ordered him to pay for half of his stepdaughter's vehicle loan. He argues that the requirement to pay for half of the vehicle loan is child support that he should not be required to pay since Wife's daughter is not a child of the marriage.

The trial court determined that the vehicle was a gift to the stepdaughter and is secured by a loan in Husband's and Wife's names. Testimony at the final hearing by Wife established that the car was given as a gift. Tr. p. 31. Husband does not dispute this testimony but only asked that he not be responsible for the loan. Furthermore, Husband has cited to no authority that supports his assertion that a car loan payment is considered child support. We conclude that the car was a gift to his Wife's daughter and the car loan payments are not child support. We therefore affirm the trial court's decision to consider the car as a gift from Husband that he should have continuing responsibility for.

Husband argues that the trial court erred when it reallocated Wife's retirement accounts to be fully Wife's. In this regard, we note that Husband sought and received a number of changes as a result of his motion to correct error. For instance, the trial court decided to split a Visa credit card bill equally between the two parties rather than

requiring Husband to be wholly responsible for it. In addition to the Visa bill, the trial court made other modifications to the property settlement agreement, such as determining that Husband was not required to pay \$540.00 in retroactive support and that he would receive personal property items worth a total of \$370.00. These modifications would require proportionate adjustments to avoid an inequitable decision. Dusenberry v. Dusenberry, 625 N.E.2d 458, 461 (Ind. Ct. App. 1993). In order to ensure proportionality, the trial court allocated all of Wife's retirement accounts to Wife.

However, in its order granting Husband's motion to correct error, the trial court failed to preserve the 50/50 asset split it intended in the original property settlement agreement. Appellant's App. p. 17. The trial court transferred \$370.00 of personal property from Wife to Husband. The trial court also transferred \$8,899.00 in the retirement account from Husband to Wife so that wife would have the entire retirement account in the amount of \$17,798.00. We have also noted the effect of the Visa bill and the Trail Blazer loan on the asset distribution.

We have calculated a corrected property division based on the reallocations contained in the trial court's order on the motion to correct error. The original equalization payment from Wife to Husband was calculated to be \$22,315.50. After taking all of the motion to correct error reallocations into account, the equalization payment from Wife to Husband would be in the amount of \$17,623.98. Consequently, Wife's portion of the marital estate is \$40,202.44 and Husband's portion is \$38,022.08. When Husband's payment of \$1,090.18 for obligations under the provisional order is taken into account, the martial estate is equally divided. As can be seen in the table



below, such a distribution of the marital estate is equitable and consistent the trial court's original property settlement agreement.

A corrected Asset Allocation is as follows:

|  | Petitioner (Wife)   | Respondent<br>(Husband)   |
|--|---------------------|---------------------------|
| Real Estate Equity                         | \$ 37,352.03        | \$ -                      |
| Ski Boat                                   | \$ -                | \$ 1,726.10               |
| Jewelry                                    | \$ 1,950.00         | \$ -                      |
| Personal Property/ Household Goods         | \$ 6,618.75         | \$ 16,693.00 <sup>1</sup> |
| Retirement Account                         | \$ 17,798.00        | \$ -                      |
| Savings Account                            | \$                  | \$ 4,296.00 <sup>2</sup>  |
|  | <u>\$ 63,718.78</u> | <u>\$ 22,715.10</u>       |
| Trail Blazer                               | \$ 3,575.36         |                           |
| Visa Bill                                  | \$ 2,317.00         | \$ 2,317.00               |
|  | <u>\$ 57,826.42</u> | <u>\$ 20,398.10</u>       |
| Recapitulation                             |                     |                           |
| Petitioner                                 | \$ 57,826.42        |                           |
| Respondent                                 | \$ 20,398.10        |                           |
| Total Marital Estate                       | <u>\$ 78,224.52</u> |                           |
| Each Party to receive                      | \$ 39,112.21        |                           |
| Wife's Portion                             | \$ 57,826.42        |                           |
|  | <u>\$ 39,112.21</u> |                           |
| Overage Wife received                      | \$ 18,714.16        |                           |
| Payment by husband under Provisional Order | <u>\$ 1,090.18</u>  |                           |

<sup>1</sup> Wife argued that she should be given a \$600 credit for the riding lawn mower that the trial court originally awarded to Wife and later awarded to Husband. However, after reviewing the trial court's calculations, Husband's personal property amount included the \$600 for the riding lawn mower while Wife's did not. Therefore when the trial court awarded the riding lawn to Husband, no change to the personal property division needed to occur.

<sup>2</sup> We note that the amount ascribed to the savings account in the original trial court order was inaccurate in Attachment II but correct in the trial court's findings of fact and conclusions of law. However, the total in the original order was correct despite the incorrect amount. We have rectified the situation in our calculation.

|                                      |                     |
|--------------------------------------|---------------------|
| Wife's Equalization Payment          | <u>\$ 17,623.98</u> |
| Wife's Portion after Equalization    | <u>\$ 40,202.44</u> |
| Husband's Portion after Equalization | <u>\$ 38,022.08</u> |

We conclude that the trial court did not abuse its discretion when it ordered Husband to continue to pay for one-half of Wife's daughter's car loan payment. We also conclude that the trial court did not abuse its discretion when it reallocated Wife's retirement plan. However, we must agree with Wife's argument that the trial court made a mathematical error in determining the equalization payment due to Husband. Therefore, we remand with instructions to recalculate the property distribution in accordance with this opinion.

Remanded with instructions.

MAY, J., and VAIDIK, J., concur.